IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANGEL DAVID MORALES-VALLELLANES Plaintiff v. UNITES STATES POSTAL SERVICE Defendant	CIVIL NO. 97-2459(CVR)

REPLY TO PLAINTIFF'S OPPOSITION

TO THE HONORABLE COURT:

COMES NOW the defendant to reply to Plaintiff's Opposition (**D.E. 444**) to Defendant's Motion for Leave to File Reply Brief (**D.E. 442**). Plaintiff's attorney has completely disregarded Local Rule 7.1(d) calculation of time as to his untimeliness argument at **D.E. 444.**

Plaintiff's **D.E. 441** was filed on July 23, 2008. Pursuant to Local Rule 7.1(d) and F.R.C.P. 6(a), the seven (7) days count begins on July 24, 2008. Excluding Saturdays and Sundays, the count ends on August 1, 2008. Defendant's Motion for Leave, under Local Rule 7.1© at **D.E. 442**, was filed on July 31, 2008, or, on time, and not untimely as plaintiff's attorney is arguing at **D.E. 444.**

It is not correct that defendant filed two (2) motions. **D.E. 442** relates to one Motion for Leave to File under Local Rule 7.1(c) with its Attachment "A". Depending on this Court's ruling,

Attachment "A" would be or would not be filed after the Court Rules on defendant's Motion for Leave at **D.E. 442.**

The Quiles case was brought forth only to illustrate one small example of a district court's reversal of a jury verdict. We are well aware that it was reversed by the Court of Appeals. In no way the intent of the defendant was for this Court to read too much into the Quiles case; first and utmost, because it is a far cry from the Morales case and secondly because it should be limited to only showing the district court's dynamics in the reversal of one jury verdict. Nothing else.

The rest of plaintiff's arguments are pure demagoguery.

The defendant has always argued that the filing of OSHA claims is not a protected activity under the Civil Rights Act of 1964 as amended in 1991 as applied to retaliation claims. However, this counsel, as an officer of the Court, has the obligation to be candid with it. Eleven years have passed and case-law has changed. In retaliation cases, the Burlington case opened the door for the concept of "protected activity" to be expanded. In that sense, our arguments before this Court should be seen within that perspective. From the standpoint of Burlingon, one has to consider that an argument could be made that OSHA claims could be a prior protected activity for retaliation claims purposes. However, this would have to be decided by a court of justice and not this counsel.

Defendant has always argued that the filing of OSHA claims are not to be considered prior protected activity for the purposes of retaliation claims under the Civil Rights law. Still, in that vein, however, one has to be aware that this could be considered an open question of law to be decided by the Court.

The rest of plaintiff's arguments do not deserve any additional time. It is obvious that many of the same have been taken out of context, are completely self-serving and are innuendos that should only satisfy plaintiff's counsel's imagination.

WHEREFORE, the defendant respectfully requests that plaintiff's **D.E. 444**, Opposition to Defendant's Motion for Leave to File Reply Brief be denied and Defendant's Motion For Leave to File at **D.E. 442** be granted.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Miguel Miranda, Esq.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico this 1st day of August, 2008.

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